



IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1702

JAMES M. ROCHFORD, et al.,

Petitioners,

vs.

ALLIANCE TO END REPRESSION, et al.,

Respondents.

**BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

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QUESTION PRESENTED

Whether the District Court abused its discretion in issuing a preliminary injunction barring defendants from continuing their systematic surveillance of plaintiffs' legal preparations and infiltration of plaintiffs' legal team.

STATEMENT OF THE CASE

Plaintiff Alliance To End Repression ("Alliance"), a coalition of organizations and individuals, is engaged in political and social activity in Chicago. On or about May 11, 1971, the Alliance formed a Surveillance Task Force to study the Subversive Unit of the Chicago Police Department and to prepare possible litigation to challenge the constitutionality of some of that Unit's activities.

Within two months of its formation, the Surveillance Task Force itself became the subject of surveillance. On July 12, 1971, the Subversive Unit commenced a special investigation of the Alliance which it code-named "Watchdog". The purpose of Watchdog was intelligence-gathering and "neutralization". As part of Watchdog, two undercover police officers infiltrated the Surveillance Task Force.

Within eleven days after the commencement of Watchdog, defendants' agents had concluded that a lawsuit "is the type of action the SUBJECT (Alliance) wishes to seek in THEIR attempt to obtain legislative and/or judicial relief and accountability in regards to the activities of the Subversive Unit of the Intelligence Division". As it became clear that progress was being made in the preparation of the lawsuit against the Subversive Unit, the police infiltrators were ordered specifically "to obtain any and all information regarding the lawsuit against the Red Squad".

Approximately one year after the special investigation had begun, a third paid police informant infiltrated the Alliance, and she became a member of its Steering Committee. This paid informant's police control officers stated

that they would "obtain and report information regarding questions members of the Alliance Surveillance Task Force are asking various groups to be used in a later lawsuit against the Security Section". The informant subsequently volunteered to assist plaintiffs' attorney in the preparation of the lawsuit by interviewing potential plaintiffs concerning their evidence. After interviewing five potential plaintiffs, the informant turned over to defendants a copy of the text of the questions and answers, which contained detailed accounts of those persons' allegations and evidence. Defendants' reports state that defendants knew that the Alliance intended "to use this information in a federal suit to show that the Red Squad engages in activities that violate lawful and constitutional guarantees afforded to citizens engaged in group activity".

Apart from these specifics, on many occasions defendants' infiltrators gathered intelligence on evidence to be used in the lawsuit and on plaintiffs' legal strategy, legal preparations, and litigation schedule. The sources of defendants' intelligence included overheard private conversations, private notes of a meeting, a private letter, attendance at a variety of private meetings and other sources of information the nature of which are presently unknown to plaintiffs.

On November 13, 1974 the instant class action was filed by the Alliance, claiming that certain practices of the Subversive Unit violated the constitutional rights of the plaintiffs.

Defendants' agents continued their information gathering on plaintiffs' legal preparations for several months after the lawsuit was filed and ceased their activities only after plaintiffs discovered and exposed the three infiltrators as secret police agents.

The information gathered by the Subversive Unit has been used in a variety of attempts to subvert the Alliance lawsuit. In response to a report from one of their infiltrators that the Alliance was "ready to proceed with the lawsuit", defendants destroyed relevant documentary evidence. (See Memorandum Opinion and Order on sanctions, November 10, 1976, p. 3.) In addition, a private letter from plaintiffs' attorney to members of the Alliance was obtained by one of defendants' infiltrators who then communicated its content to the Subversive Unit. Information contained within that letter as to the attorney's established deadline for adding new plaintiffs to the planned suit was subsequently relied upon by defendants in support of their Motion to Strike the Complaint and in their opposition to plaintiffs' Motion for Class Certification.

Counsel for defendants have repeatedly asserted their intention to continue to use the fruits of their infiltration of plaintiff Alliance to subvert this lawsuit. On September 3, 1975, while referring to defendants' intelligence-gathering on plaintiffs' legal preparations, defendants' counsel stated:

We are entitled to present a defense, and we intend to present a defense with whatever material we have available to us.

These and similar activities of the defendants have seriously hampered plaintiffs' ability to pursue this litigation in the type of atmosphere that is essential to the operation of the adversary system.

Defendants have never suggested any specific law enforcement purpose or any other legitimate governmental purpose for their conduct described here.

On November 10, 1976, the District Court granted plaintiffs' Motion for a Preliminary Injunction. The Court found that there was documentary evidence that defendants had infiltrated the Surveillance Task Force and ordered background reports on its members and on the Alliance attorney, infiltrated plaintiffs' legal team, actively participated in interviewing potential plaintiffs, and attended private meetings of plaintiffs and their counsel. The Court also specifically found that "defendants have gathered information about litigation plans and strategy by infiltration of meetings between organization members and at least one of plaintiffs' attorneys".

Accordingly, the District Court enjoined defendants from joining plaintiffs' legal team, from using in this litigation any data which they had obtained by previously having joined plaintiffs' legal team, and from gathering non-public information concerning plaintiffs' evidence, legal strategy, legal preparations, legal objectives and litigation schedule, other than through orderly discovery procedures.

On March 1, 1977, the Court of Appeals for the Seventh Circuit affirmed the issuance of the preliminary injunction.

REASONS FOR DENYING WRIT

The opinion of the United States Court of Appeals for the Seventh Circuit in this case is not in any way inconsistent with any decision of this Court nor of any court of appeals nor does it involve any important federal questions. Moreover, as the Court of Appeals recognized, the preliminary injunction in this case is of extremely narrow scope:

Before addressing ourselves to the propriety of its issuance, we note that the challenged order is extremely narrow in its scope. It does not direct the defendants to completely refrain, pending a final hearing on the merits, from engaging in the intelligence-gathering practices challenged in the underlying lawsuit. The order simply enjoins defendants and their agents from engaging in certain covert information-gathering practices (and from using any information previously obtained through such practices) to the extent that those practices are directed at plaintiffs' efforts to litigate the merits of the underlying suit unhindered by the unorthodox "discovery" methods of an adversary party.

Finally, the reasoning of the Court of Appeals is unimpeachably correct. Finding it inappropriate and unnecessary to address plaintiffs' contention that the activities of the defendants in the context of this case are violative of the First and Fourteenth Amendments, the Court of Appeals reasoned that such activities seriously undermine the carefully designed discovery procedures of the Federal Rules of Civil Procedure. Accordingly, the Court concluded that "the district court was well within the bounds of its permissible discretion in issuing an order designed to preserve the integrity and efficacy of the discovery process in litigation pending before it". We adopt the opinion of the Court of Appeals.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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